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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 401

WILLIE MELMOTH BOMAR,
Petitioner,

vs.

ROWENA KEITH KEYES AND THE CITY OF NEW YORK

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

WILLIE MELMOTH BOMAR,
Petitioner, pro se.

SUPREME COURT OF THE UNITED STATES

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PETITION FOR WRIT OF CERTIORARI

To the Honorables, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Willie Melmoth Bomar, respectfully submits her petition for a writ of certiorari to review the findings of the United States Circuit Court of Appeals for the Second Circuit in the above entitled case.

The United States Circuit Court of Appeals for the Second Circuit has rendered an opinion in which the status of the City of New York as a defendant in the above entitled case has not been made clear.

Statement of Case

According to the certified copy of the Record on Appeal from the District Court of the United States for the South-

ern District of New York to the United States Circuit Court of Appeals for the Second Circuit now on file in the office of the Clerk of the Supreme Court of the United States, appellant was a probationary teacher in the Girls' High School, Brooklyn, New York, during the academic year of 1938-1939; and for the entire school year was assigned a heavier teaching load than any other teacher in that school and performed her arduous and excessive assignments in a manner advantageous to her classes as shown by the reports of the probationary principal, Rowena Keith Keyes, and signed, according to requirements, by appellant (fols. 48 and 49).

While serving as a teacher in the above mentioned public high school, maintained by the taxpayers of New York, appellant was summoned to serve as a juror in the Federal Court in the City of New York. Reporting to the office of the probationary principal, Rowena Keith Keyes, at the above mentioned school and finding the said probationary principal, Rowena Keith Keyes, not in her office, appellant left a note in the mail box of the said probationary principal, Rowena Keith Keyes, at the said Girls' High School in Brooklyn the day before reporting for jury service, in which appellant advised the said probationary principal of her impending absence in order to perform the civil obligation of serving as a juror in the United States District Court for the Southern District of New York.

During appellant's period of service as a juror in the Federal Court, the City of New York withheld the sum of $8.50—the price paid to the substitute teacher taking appellant's classes during appellant's absence for the purpose of serving as a Federal Court juror—from appellant's salary for each day of service rendered by appellant as a juror in the Federal Court. Appellant's remuneration as a Federal Court juror was four dollars ($4.00) per day. Thus, appellant's performance of the civil obligation of

Federal jury service was at a personal financial loss of $4.50 per day (fol. 15).

Not content with having penalized appellant financially because of her service as a juror in the Federal Court, the City of New York, through its agent Rowena Keith Keyes—then probationary principal of Girls' High School, but upon whom the City of New York later put its stamp of approval by granting permanent appointment as a high school principal at an annual salary of $10,000 per year and whom it has since retired on a pension of several thousand dollars per year—later charged appellant with *Neglect of Duty* because of her absence from the classroom to serve as a juror in the Federal Court in registered missive No. 39799, mailed from Station B, United States Post Office, Brooklyn, New York, under date of September 19, 1939, as follows:

"From March 7th to April 4th Dr. Bomar was absent on jury duty 19 days. Since jury duty for women is granted only on their application and since two weeks is the usual limit for such service, I feel that 19 days or four weeks was an excessive amount of time to take from her classes." (Fols. 40-41.)

At a so-called "hearing" by school officials of the City of New York on the above charge, appellant was denied representation by counsel, no *outsiders*—that is, no one not connected with the New York City public school system, being allowed at the so-called "hearing." After the above mentioned so-called "hearing" at which appellant was denied representation by counsel, appellant was dismissed from her position as a teacher in the public school system, effective November 1, 1939. Thus, appellant was deprived of means of livelihood without due process of law (fol. 174).

Appellant later, through the medium of a teachers' organization, of which appellant has never been a member, appealed to the New York State Commissioner of Educa-

tion to review the "star chamber" proceedings which had resulted in appellant's deprivation of means of livelihood because of her performance—at personal financial loss—of the civil obligation of Federal jury service. This the New York State Commissioner of Education refused to do on the ground that as a teacher on probationary status only, appellant had no "rights" to a determination of the issues on the basis of merit. Thereupon, the teachers' organization, of which appellant has never been a member, instituted proceedings in the State Court (in Albany, Judge William Murray, sitting) by which it was sought to compel the New York State Commissioner of Education to review the proceedings by which appellant's dismissal as a teacher in the New York City public school system had been brought about and make a determination of the matter on the basis of merit. But the Court refused to order any review of appellant's dismissal, on the ground that as a teacher of probationary status only, appellant had no "rights."

Appellant, thus denied by New York City and State officials of her right to a review and determination on the basis of merit of the issues involved in her dismissal as an educational employee of the City of New York after the following charge of *Neglect of Duty* had been made:

"From March 7th to April 4th Dr. Bomar was absent on jury duty 19 days. Since jury duty for women is granted only on their application and since two weeks is the usual limit for such service, I feel that 19 days or four weeks was an excessive amount of time to take from her classes"

filed a complaint in the United States District Court for the Southern District of New York against Rowena Keith Keyes who made the charge of *Neglect of Duty* against appellant because of her absence from the classroom to serve—at personal financial loss—as a juror in the Federal Court, and the City of New York who, through its duly

authorized agents, sustained the above quoted charge at a so-called "hearing" at which appellant was denied representation by counsel and at which no "outsider," that is, person not connected with the New York City public education system, could be present (fols. 74-75).

Appellant's complaint, coming on to be heard before the Hon. Murray Hulbert, U. S. D. J., on January 22, 1946, was dismissed by the said Court, and a judgment assessing ten dollars as costs against appellant was entered under date of March 21, 1946 (fols. 124 and 134).

During the hearing at which the appellees Rowena Keith Keyes and the City of New York, through counsel of the office of the Corporation Counsel of the City of New York, asked for the dismissal of the complaint, the Court, over the protests and objections of appellant, received from counsel for the appellees Rowena Keith Keyes and the City of New York papers which were entirely extraneous from the charge upon which the complaint was based and which were, therefore, immaterial, incompetent and irrelevant to the action and were, in truth, vicious fictions concocted by the appellees in their effort to detract attention from the issue involved, that of intimidation and penalization of an American citizen because of the performance by that citizen (appellant), at personal financial loss, of the civil obligation of Federal jury service (fol. 171).

Appellant appealed the decision of the United States District Court for the Southern District of New York dismissing the complaint in which the Court (Hon. Murray Hulbert, U. S. D. J.) held that "so long as the plaintiff was employed as a teacher in the public schools of the City of New York, she could not absent herself from her post of duty without permission or legal excuse" and that "The educational authorities undoubtedly had the right to entertain, pass upon and determine the charge of absence from duty without leave, and the fact that she was during that

period (March 7 to April 4, 1939) actually serving as a trial juror in this court did not excuse her absence and inability to perform her duties as a teacher and there was no violation of her civil rights guaranteed to her by the Constitution of the United States'' (fols. 109-110).

In her appeal to the United States Circuit Court of Appeals for the Second Circuit, appellant asked that the judgment of the United States Circuit Court for the Southern District of New York be reversed and the case remanded for jury trial, contending that neither the City of New York nor any other corporation or individual can flout legal mandates and willfully and maliciously deprive an American citizen of means of livelihood on a charge of *Neglect of Duty* because of the performance of the civil obligation of jury service, without having to answer for such un-Americanism in an unbiased court of competent jurisdiction with a duly impaneled jury of American citizens sitting in judgment on the facts at issue (fols. 179-180).

Appellant also complained in her appeal to the United States District Court of the conduct of the District Court (Hon. Murray Hulbert, U. S. D. J) in receiving from counsel for the appellees papers which had not been served upon the appellant and in considering such papers, which were immaterial, incompetent and irrelevant to the issues involved in the complaint, in rendering an opinion (fols. 171-180).

In the decision handed down on May 16, 1947, the United States Circuit Court of Appeals for the Second Circuit took no notice of appellant's complaint of the conduct of the District Court (Hon. Murray Hulbert, U. S. D. J.) in receiving from counsel for appellees, and considering in the opinion rendered, papers which had not been served upon appellant and which were entirely extraneous from the issues involved in the complaint and which were vicious fictions intended to bias the Court and obscure the real issue

of violation of appellant's civil rights and intimidation and penalization of appellant for the performance by appellant, at personal financial loss, of Federal jury service.

The United States Circuit Court of Appeals for the Second Circuit in its decision did, however, reverse the judgment of the District Court and remanded the cause for trial.

Nowhere in the opinion did the Circuit Court of Appeals reverse the judgment of the District Court with respect to one of the two appellees, Rowena Keith Keyes and the City of New York, and not the other; and nowhere in the opinion did the Circuit Court of Appeals remand the cause for trial with respect to one of the two appellees, Rowena Keith Keyes and the City of New York, and not the other. In the closing sentence of the opinion of the Circuit Court of Appeals, rendered under date of May 16, 1947, the statement is short and concise, as follows:

"Judgment reversed; cause remanded for trial."

Appellant contends that by such summation by the Circuit Court of Appeals, both defendants named in the complaint, that is, Rowena Keith Keyes, agent, and the City of New York, principal, were intended by the Circuit Court of Appeals to be continued as defendants and that no change in title of the original complaint was intended by the Circuit Court of Appeals when it closed its opinion with the declaration:

"Judgment reversed; cause remanded for trial."

However, the Circuit Court of Appeals, in its opinion (R. 75) said: "The City of New York at least is not [liable] for it had no part in the supposed wrong; and the complaint was properly dismissed as to it."

Counsel for the appellees contends that by that statement the City of New York has been removed as a defendant.

Appellant claims that such an interpretation is erroneous; and contends that, regardless of any intermediary agencies that may be created by the City of New York to handle its educational affairs, it is, in the last analysis, the City of New York, itself, which is the principal in an action of this kind where an employee of the public education system, supported by public funds derived by taxation, has been removed from the public payroll on a charge of *Neglect of Duty,* as follows:

"From March 7th to April 4th Dr. Bomar was absent on jury duty 19 days. Since jury duty for women is granted only on their application and since two weeks is the usual limit for such service, I feel that 19 days or four weeks was an excessive amount of time to take from her classes."

Appellant has secured a stay of any order, judgment or decree by the United States District Court for the Southern District of New York until such time as the Supreme Court of the United States has determined the status of the City of New York as a defendant in this action.

A certified copy of the record in this case in the United States Circuit Court of Appeals for the Second Circuit, and ten printed copies of the Transcript of Record on Appeal from the District Court of the United States for the Southern District of New York have been deposited with the Clerk of the United States Supreme Court. Wherefore your petitioner respectfully prays that this case may be reviewed and the status of the City of New York as a defendant be determined by this Honorable Court as provided by the Statutes of the United States.

Petitioner feeling that, because of the hostility shown toward her by the United States District Court for the Southern District of New York, she will be unable to secure a fair and impartial hearing in such Court, respectfully requests this Honorable Court to grant a change of venue

in this case—perhaps to the nation's capital—so that petitioner may be assured of fair and impartial treatment in the conduct of the hearing; and for such other and further relief as to this Court may seem just and proper.

WILLIE MELMOTH BOMAR,
Petitioner, pro se.

Sworn to and subscribed before me, this the 11th day of October, 1947.

W. D. HURST, *C. N. P.*,
Wheeler Co., Ga.

[SEAL.]